

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 5991 of 2007()

CRIME NO.59/07 OF PATHANAPURAM EXCISE RANGE.

PETITIONER/ADDL.ACCUSED NO.4

GOPAKUMAR.B,
S/O BALAKRISHNA PILLAI,
ANANDA VILASOM, THALAVOOR, MANJAKKALA,
PATHANAPURAM TALUK, KOTTAYAM DIST., PRESENTLY
RESIDING AT AMBAZHAVELIL VEEDU, CHERUPUNCHA MURI,
PERINGANADU VILLAGE, ADOOR TALUK,PATHANAMTHITTA.

BY ADV. SRI.K.MADHUSOODHANAN NAIR

RESPONDENTS: STATE

STATE OF KERALA, REP. BY
ASST. EXCISE COMMISSIONER, INTELLIGENCE &
INVESTIGATION BUREAU(SZ), THIRUVANANTHAPURAM,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A. No. 5991 OF 2007

Dated this the 8th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 4th accused. Altogether, there are four accused persons. The crux of the allegations against the accused persons is that they got a consignment of spirit unloaded at the workshop of the 1st accused. 1st, 3rd and 4th accused were available at the workshop. When the Excise party came to the scene of the crime. on getting certain clues, they found 35 x 354 litres of spirit in cans available at the workshop. A lorry in which the consignment of spirit was carried to the workshop was also available. Accused 1 to 3 were arrayed as accused in the occurrence report and the seizure mahazar. The petitioner – the 4th accused, allegedly ran away from the scene. He has been brought on the array of accused later. Investigation is

in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has absolutely nothing to do with the consignment of spirit. He was not available at the scene. The petitioner does not know why he has been arrayed as an accused. He apprehends that the 1st and 3rd accused, who have been arrested, may have some animosity against him and such animosity may be prompting those accused to falsely implicate him in the crime. The petitioner is willing to co-operate with the Investigators. He shall surrender before the learned Magistrate or the Investigators. He may be saved of the undeserved trauma of arrest and incarceration. The petitioner is respectably employed, it is further submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available indications and the materials collected – primarily confession statements of the co-accused, compellingly indicate the complicity of the petitioner. At this stage of the proceedings, the petitioner may not be permitted to arm himself with an order of anticipatory bail. The available indications suggest that the business was carried on in partnership by accused 1, 3 and 4. Accused No.4 – the petitioner herein, had allegedly introduced

the 1st accused as a workshop owner to get a lease of the property from the owner. There was no workshop activity carried on in the premises. It was only a camouflage and actually the trade of illicit liquor was going on in the property. There are absolutely no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. The Case Diary has been placed before me for my perusal. At the early stage of investigation, I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations raised or the credibility of the data collected. I do not find any features in this case that would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. It is not expedient or proper to permit the petitioner to be armed himself with an order of anticipatory bail. The petitioner has no satisfactory explanation as to why and how accused 1 and 3 are attempting to falsely implicate him.

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5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer of the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge